77-1853

IN THE

SUPREME COURT OF THE UNITED STATES

THE MAY DEPARTMENT STORES COMPANY,
Petitioner,

vs.

JAMES EDWARD SMITH and MABLE M. WALTON,

and

VETERANS ADMINISTRATION,
Garnishee.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

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The May Department Stores, your petitioner, respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above entitled cause on March 31, 1978.

OPINIONS BELOW

This cause was decided by a panel of the United States Court of Appeals for the Eighth Circuit on March 31, 1978, in an opinion which has not yet been officially reported. The opinion is reproduced as Appendix A hereto.

On April 26, 1978, the United States Court of Appeals for the Eighth Circuit denied petitioner's motion for rehearing which is reproduced as Appendix B hereto.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

I

Whether an Employee of an Agency of the United States Government Is Immune From Garnishment Under the Doctrine of Sovereign Immunity; and, if So, Whether There Is Any Rational Reason for Sustaining That Doctrine.

STATEMENT OF THE CASE

Defendant James Edward Smith opened a charge account with petitioner, The May Department Stores Company, and utilized that charge account to purchase items at Famous-Barr, a division of that Company. When defendant failed to pay some of the bills duly presented to him, petitioner filed suit against Mr. Smith on July 1, 1976, in the Fifth District Magistrate Court of St. Louis County, Missouri. A summons was served upon Mr. Smith, and on July 28, 1976, a judgment was rendered against him. Subsequently, on June 14, 1977, an execution and garnishment was issued. On June 17, 1977, petitioner filed the garnishment with the Veterans Administration requesting it to withhold certain monies from the pay of Mr. Smith in order to collect the judgment of July 28, 1976. The Veterans Administration answered the interrogatories attached to the garnishment on June 24, 1977. The petitioner denied these answers to interrogatories on July 29, 1977. Garnishee filed a Notice for filing a Petition for Removal on August 10, 1977, and the case was brought before the United States District Court for the Eastern District of Missouri.

Likewise, defendant Mable M. Walton made charge purcases at Famous-Barr and failed to pay bills upon presentment. The May Department Stores Company filed suit against Mable Walton in late 1974 in St. Clair County, Illinois. On January 27, 1975, petitioner took a judgment against Mable Walton in the Circuit Court of St. Clair County, Illinois. On April 4, 1977, the petitioner filed a Registration of Foreign Judgment in the Magistrate Court for the Fifth District of St. Louis County, Missouri. A summons was served upon Mrs. Walton, and a judgment was entered registering the foreign judgment on May 4, 1977. On June 28, 1977, the Veterans Administration filed an answer to interrogatories. On July 29, 1977, the petitioner filed a Denial of the Answers to the Interrogatories. On August 10, 1977, a Petition for Removal was filed by the United States Attorney, and the matter was brought before the United States District Court for the Eastern District of Missouri.

Each case resulted in a dismissal with prejudice, the Smith case on October 18, 1977, and the Walton case on October 21, 1977. Appeals were duly filed to the United States Court of Appeals for the Eighth Circuit. The appeals were consolidated for purposes of briefing and submission. The United States Court of Appeals for the Eighth Circuit found for the Veterans Administration on March 31, 1978. The petitioner filed a motion for rehearing, which motion was denied on April 26, 1978.

The petitioner submits that the doctrine of sovereign immunity, in the case of garnishment proceedings, has become outmoded, out-of-date, and out of touch with reality. The petitioner has searched in vain through the various briefs of the

government for one rational reason for applying the doctrine, to garnishment proceedings, and has found none. There has been considerable litigation on this point in the last few years, dealing with the "sue and be sued" clauses of various agencies, as indicated by the cases cited in the concurring opinion of the case of *The May Department Stores Company v. Monroe Williamson*, 549 F. 2d 1147 (1977), which states:

> The government's refusal to follow the dictates of the Standard Oil decision has created a wave of repetitious litigation and confusion in Federal District Courts throughout the United States.

There were various arguments in support of the English Common Law doctrine of sovereign immunity. Although these arguments are of ancient origin, going back to 1573, petitioner believes that what follows is a comprehensive list.

One argument is that there is no fund available for the payment of any judgment that may be rendered against the sovereign. In garnishments, that rationale simply would not apply since the money for the payment of the employee has been set aside and is available. A second argument is that the public should not bear the expense of a judgment rendered against the sovereign. This argument must also fail, for there is no additional expense to be borne. A third argument is that the sovereign—when the doctrine originated, literally the King—is infallible and therefore no action will lie against him. Since the adoption of this doctrine, Americans fought the Revolutionary War to free themselves from a notoriously fallible king; and the "sovereign" that we have left has proven fallible on many occasions. A fourth argument is that employees of the State cannot bind the State to their acts. Although at the time this argument was first put forth it may have been true, it is now clear that employees of the State may bind the state. A fifth argument is that the public funds are held in trust for the

specific use to which they are appropriated. This is no longer true except for certain specified trust funds. In the case at hand, petitioner is not seeking to attach any such funds. A sixth argument is that to hold a sovereign accountable would threaten the natural stability of the sovereign. It is inconceivable that the government's paying a garnishor the same amount that the government would have paid the employee would result in overthrow of the government. A seventh argument is that the sovereign may make a mistake in the withholding of funds and therefore become liable for greater than the amount of money payable to the employee. To hold the government accountable for errors of this sort is no more nor less critical than holding it accountable for tort, breach of contract, or the many other acts for which it already recognizes liability.

The United States did not, as most states did, adopt Common Law sovereign immunity as its substantive law. The Constitution of the United States is silent on that point. Rather the doctrine was engrafted by judicial decisions. The first case petitioner has found that raises the doctrine of sovereign immunity in a garnishment proceeding is *Buchanan v. Alexander*, 45 U.S. (4 How.) 20 (1846). In that case, the Supreme Court of the United States held that the seamen of the Frigate Constitution who had failed to pay their indebtedness to various innkeepers of Norfolk could not have their pay attached by the Courts of the State of Virginia. In so ruling, the Supreme Court of the United States made four arguments as to why the pay of the Seamen of the Constitution were not to be attached. The first argument is that it would be embarrassing to the government of the United States. The second argument is that it would be fatal to the public service of the United States. The third argument is that the funds of the government of the United States are appropriated to specific objects, not to the payment of innkeepers. The fourth argument is that the money sought to be attached was the money of the United States, not the money of the employee.

REASONS FOR GRANTING THE WRIT

I

The Rationales for the Doctrine of Sovereign Immunity do Not Justify Its Application to the Garnishment of an Employee of a Governmental Agency.

Since the time of *Buchanan v. Alexander*, many changes have taken place in the world and the law. In the context of today's commercial environment, it is not difficult to see why none of those arguments remains persuasive. First, it is not embarrassing to the government to pay a creditor instead of an employee. It is a fact of life dealt with daily in the commercial world. Second, it is obviously not fatal to the public service of the United States. *Waterbury v. Board of Commissioners*, 10 Montana 515, 26 P. 1002 (1891) is on point:

> The servant of the county is thus secured and his support, if he earns it, and the county is not liable to lose services of the competent officers. Indeed, it has never been observed that a county has difficulty in obtaining employees to do its work, and the county surely may obtain as good service from those who pay their debts as from those who avoid such payment, and are protected in the avoidance by the unsatisfactory doctrine of public policy.

Employees would not leave government employment merely because their pay could be attached, just as it could if they were working for anyone else. Third, the funds of the government are not necessarily appropriated to specific objects any longer, nor is this petitioner seeking to attach any sum of money that would not otherwise be paid to that specific employee, which would not come from any appropriated trust fund. Fourth, to state that, prior to the moment of handing the money to the employee, it is money of the United States not of the employee is a spurious

argument. The employee, if he is not paid, may file suit against the United States to recover his just compensation. The money in actual fact does belong to the employee after he has performed the work for which he has contracted with the government of the United States, regardless of who is holding it at that moment.

A major change since the time of *Buchanan v. Alexander* has been the advent of the computer. The employees of the government of the United States are now paid, not by species, not by hand-drawn checks, but by computer-prepared checks. Various deductions are taken from these checks for various reasons; and the petitioner contends that to establish one more deduction that would be programmed into the computer would cause no hardship, bear no expense, and would require only one action by a key punch operator in order to enforce valid judgments rendered by the Courts of various states. It is incongruous that there may be a deduction for hospitalization insurance but not a deduction to give full faith and credit to the judgment of a state.

Recognizing the inconsistencies inherent in sovereign immunity, the United States has passed several acts waiving its immunity and permitting suits against the government of the United States. Citizens may sue the government for torts and for breaches of certain contracts. More specifically, citizens may file garnishment actions against certain branches of the government, but apparently not against others. The 8th Circuit Court of Appeals in the case of *The May Department Stores Company v. Monroe Williamson*, 549 F. 2d 1147 (8th Cir. 1977), decided that employees of the Postal Service may have their pay attached by means of a state garnishment. In that case, the fact that the agency had a "sue and be sued" clause appeared to be controlling. In the instant case, the Veterans Administration has a "sue and be sued" clause; however, the United States Attorney has contended that this does not apply to garnishment pro-

ceedings but applies solely to certain real estate transactions. The merchant in today's world thus must keep a copy of the United States Code handy at the time of transacting business in order to ascertain whether or not he is going to have an adequate remedy at law to enforce a judgment, if necessary, before he can extend credit to an employee of the United States government. This is an absurd result. The ordinary merchant should not have to be a legal expert, but should have a reasonable rule of thumb. If he extends credit to an employee of the United States government, he should be able to enforce a judgment against that employee of the United States, in exactly the same way as he would do it against anyone else's employee.

The large number of governmental employees in the total work force of the United States makes the inconsistency which we now have a great burden on the commerce of the states. According to the Department of Commerce publication, "Survey of Current Business", the October 1977 issue, the total number of employees in the United States is 82,448,000; and 15,372,000 of them work for a governmental body. According to the petitioner's calculations, this is approximately 19% of the total labor force of the United States. Of these governmental employees, the government of the United States employs some 2,733,000 persons, which is 3% of the total work force. This is not an insignificant factor either in terms of number or percentage of employees. Virtually every merchant and extender of credit in the United States will have dealings with governmental employees and thus venture unwittingly into this guagmire.

While allowing its employees to benefit from the outdated Common Law doctrine of sovereign immunity, the United States government has righteously passed statute after statute regulating the garnishment of employees of others. In fact, 28 U.S.C. § 2405 sets forth the rules for garnishments filed by the United States against employees of others. Section 367(m) of 28 U.S.C. specifically provides that a judge's retirement pay is not subject

to garnishment. In 15 U.S.C. §§ 1671-77 of the Consumer Credit Protection Acts are contained the rules relating to garnishments that are to be followed by state courts. It is an anomaly for the government of the United States to lay down the rules and regulations for everyone else to follow on the subject of garnishment, while its employees remain immune from those rules and regulations. The government should not be allowed to avoid its own presumably fair and practicable rules, but rather should be proving their fairness and practicability by following them itself.

The various states of the United States have considered the problem of the attachment of pay of their servants, and have come to the overwhelming conclusion that it is only equitable and just that the pay of these servants be attached. There are six states that do not allow the pay of public servants to be attached; they are Florida, Maryland, Massachusetts, Rhode Island, South Carolina and Texas. The States of Texas and South Carolina are more consistent than the others in that they allow no attachment of pay of anyone, whether governmental or employees of private industry. The other forty-four states have decided to allow this sort of attachment. The overwhelming majority of the states agree with the petitioner that there is no justifiable reason why the pay of a public servant should not be attached.

The question remains, why are employees of the United States immune from the garnishment process? There is neither a constitutional nor a statutory provision granting such immunity. The sole answer seems to be that *Buchanan v. Alexander* is stare decisis. Justice Holmes, in a speech at the Harvard Law School summed up the countervailing argument:

> It is revolting to have no better reason for rule of law than so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down

have vanished long since, and the rules simply persist from blind imitation from the past. 10 Harvard Law Review 469.

Since the sovereign immunity from garnishments is of judicial origin, it may be and should be abrogated by judicial decision. The doctrine of sovereign immunity as regards tort liability was recently abolished in Missouri. Writing for the dissent, Judge Finch stated:

> The doctrine of Stare Decisis serves a very useful and desirable purpose in our jurisprudence by establishing needed stability and predictability in the law. However, the doctrine is not intended to provide rigidity in the law and must not be permitted to do so in cases wherein an existing rule or doctrine results in unfair and outmoded discriminatory treatment of persons. In view of my conclusion of whatever reasons previously existed for application of the doctrine no longer justify its continuance. *O'Dell v. School District of Independence*, 521 S.W. 2d 403 (Mo. 1977).

The dissent of the *O'Dell v. School District of Independence* case became the majority opinion of the Supreme Court of Missouri with the case of *Jean Jones v. State Highway Commission* (No. 60017, Mo. 1977). In that case Judge Seiler, writing for the majority, adopted Judge Finch's *O'Dell* dissent and added that, since the Common Law doctrine of sovereign immunity was based on decisional law, the Missouri Courts have the authority to alter or abrogate the doctrine.

The State of Illinois recently abolished immunity from garnishment proceedings. *Henderson v. Foster*, 319 N.E. 2d 789. The Supreme Court of the State of Illinois stated:

> The immunity from such actions is of judicial origin and can therefore be abolished by this Court. We find little logic in allowing suits against government bodies in tort or

> contract, and yet still denying actions in garnishments or under the Wage Deduction Act. We find that the Doctrine of Wage-Garnishment Immunity is unsound and unjust under conditions and consider that we must abolish that immunity. *Henderson v. Foster*, supra at (Ill. 1974).

There exists little or no reason to maintain the doctrine in the latter half of the Twentieth Century, however compelling its reasons may have been at some earlier time. On the contrary,

> The argument of public policy as to inconvenience to the county and its officers does not reach our mind with sufficient force to impair another view of law and of right that is recognized throughout the civilized world, that is, that debtors should pay their debts. *Waterbury v. Board of Commissioners*, supra.

CONCLUSION

For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 77-1848

The May Department Stores Company, Appellant,

v.

James Edward Smith, Appellee.

Veterans Administration, Garnishee.

No. 77-1849

The May Department Stores Company, Appellant,

v.

Mable M. Walton. Appellee.

Veterans Administration, Garnishee.

Appeals from the United States District Court for the Eastern District of Missouri.

Submitted: March 23, 1978

Filed: March 31, 1978

Before Heaney, Stephenson and Henley, Circuit Judges.

Per Curiam.

These consolidated appeals from the United States District Court for the Eastern District of Missouri[1] present the narrow question whether the Veterans Administration is immune to garnishment procedures to effect judgments in state courts.

James Edward Smith and Mable M. Walton, both employees of the Veterans Administration, made several purchases on credit from the Famous-Barr Department Store, a division of appellant May Department Stores Company. After they failed to pay the bills duly submitted to them, appellant filed suit in state court and obtained judgments against them. Appellant then sought to garnish their wages. The Veterans Administration, as garnishee, successfully sought to remove the action to the federal district court. The Veterans Administration then moved to dismiss and these motions were granted on the basis that the Veterans Administration is immune to garnishment procedures to effect judgments in state courts. We affirm.

"It long has been established, of course, that the United States, as sovereign, 'is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.' " *United States v. Testan*, 424 U.S. 392, 399 (1976), *quoting United States v. Sherwood*, 312 U.S. 584, 586 (1941). *See also Bor-Son Building Corp. v. Heller*, No. 77-1632 slip op. at 6 (8th Cir. March 8, 1978). This general rule of sovereign immunity has also long been applied to suits seeking to garnish the wages of employees of the United States. *See, e.g., Buchanan v. Alexander*, 45 U.S. (4 How.) 20 (1846).

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[1] The Honorable John F. Nangle (No. 77-1849) and The Honorable H. Kenneth Wangelin (No. 77-1848), presiding. The decision appealed from in No. 77-1849 is reported at 438 F.Supp. 916. The decision appealed from in No. 77-1848 is, as yet, unreported.

Although the general rule of immunity from garnishment remains intact,[2] courts have been liberal in finding that the immunity has been waived. The most frequent basis for finding a waiver of immunity, and the only basis to do so in this case, has been congressional enactment of statutes authorizing federal agencies to sue and be sued in courts of competent jurisdiction. *See, e.g., Reconstruction Finance Corp. v. Menihan Corp.*, 312 U.S. 81 (1941); *Bor-Son Building Corp. v. Heller, supra; May Dept. Stores Co. v. Williamson*, 549 F.2d 1147 (8th Cir. 1977). As we have recently noted, the words "sue and be sued" normally embrace all civil process incident to legal proceedings, including garnishment procedures. *See May Dept. Stores Co. v. Williamson, supra.*

The "sue and be sued" clauses covering the Veterans Administration, 38 U.S.C. § 1820(a)(1), as it read at the time this suit was filed, provided:

> (a) Notwithstanding the provisions of any other law, with respect to matters arising by reason of this chapter, the Administrator may—
>
> > (1) sue and be sued in the Administrator's official capacity in any court of competent jurisdiction, State or Federal. . . .

At first blush, this "sue and be sued" clause might appear to be a waiver of immunity in regard to garnishment proceedings. One court has so held. *See Chicago Housing Authority v. Davis*, No. 75 C 2133 (N.D. Ill. Nov. 29, 1975).

We are persuaded, however, that the *Davis* case was incorrectly decided and that the better reasoned view is that expressed in *DePaul Community Health Center v. Campbell*, —

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[2] Appellant asks us to "overrule" the Supreme Court cases establishing the doctrine of sovereign immunity as the law of the land. Suffice it to say that we are in no position to take such action.

F.Supp. —, No. 77-025 C (4) (E.D. Mo. March 29, 1977), a case relied upon by the district courts in the cases currently before us. In *Campbell* the court noted that this "sue and be sued" clause is expressly limited to "matters arising by reason of this chapter," and that the chapter referred to is chapter 37, entitled "Home, Condominium, and Mobile Home Loans." Accordingly, the *Campbell* court distinguished cases where the "sue and be sued" clause was drafted in general terms, *see, e.g., May Dept. Stores Co. v. Williamson, supra,* and cases where the "sue and be sued" clause related to statutory provisions dealing with agency employees, *see, e.g., Federal Housing Admin. v. Burr,* 309 U.S. 243 (1940), and held that the waiver of immunity in 38 U.S.C. § 1820(a)(1) did not extend to garnishment proceedings.

We conclude that the result reached in *Campbell* and the cases currently before us accurately assesses the congressional intent in enacting 38 U.S.C. § 1820(a)(1). Our conclusion is bolstered by the fact that Congress has recently amended this section. As amended the section provides:

> (a) Notwithstanding the provisions of any other law, with respect to matters arising by reason of this chapter, the Administrator may—
>
> > (1) sue and be sued in the Administrator's capacity in any court of competent jurisdiction, State or Federal, but *nothing in this clause shall be construed as authorizing garnishment or attachment against the Administrator, the Veterans' Administration, or any of its employees.* . . . (emphasis added),

The legislative history of this amendment includes the following language:

> *Reaffirmation of Congressional Intent With Respect to Limited Waiver of Sovereign Immunity (Section 404)*

> Section 404 [38 U.S.C. § 1820(a)(1)] reaffirms the intent of the Congress with respect to the limited waiver of sovereign immunity provided by section 1820 of title 38, United States Code, which permits suits by and against the Administrator of Veterans' Affairs in, but specifically limits such suits to, home-loan guaranty matters. Despite the clear intent and statutory language of this section, in *Chicago Housing Authority v. Davis,* Civil No. 75 C 2133, November 20, 1975, the United States District Court for the Northern District of Illinois held that section 1820(a)(1), which provides that the Administrator, with respect to matters arising by reason of chapter 37 (relating to the VA's home-loan guaranty program), may "sue and be sued in the Administrator's official capacity," permitted garnishment of a VA employee's salary for the benefit of a creditor on the theory that this provision constituted a complete waiver of sovereign immunity. That decision clearly exceeded the scope of section 1820, as well as the scope of section 659 of title 42, United States Code (Public Law 93-647) which permits garnishment of Federal employees' salaries only for alimony and child support purposes. As a result, several hundred garnishment actions have been instituted by creditors against the VA in the Chicago area. On the basis of the *Davis* decision, the VA has had to honor the writs of garnishment which have been issued in that judicial district.
>
> In a recent decision, *DePaul Community Health Center v. Campbell,* Civil No. 77-025 C (4) (March 29, 1977), the District Court for the Eastern District of Missouri refused to follow *Davis* and, in the Committee's view, correctly held that the waiver of sovereign immunity in section 1820 extends only to home-loan guaranty matters. Nevertheless, it is possible that other courts may follow the *Davis* rationale absent the clarification of congressional intent provided by this section.

The Committee emphasizes that nothing in this section should be construed as limiting or nullifying the specific provisions of section 659 of title 42 and its accompanying provisions which permit garnishment of Federal employees' salaries (and other benefits based upon remuneration for employment) for alimony and child support purposes.

S. REP. No. 95-412, 95th Cong., 1st Sess., 22-23 (1977), *reprinted in* [1977] U.S. CODE & AD. NEWS 4180, 4196-97. This subsequent amendment and its legislative history, although not controlling, is nonetheless entitled to substantial weight in construing the earlier law. *See, e.g., Glidden Co. v. Zdanok*, 370 U.S. 530, 541 (1962).

We conclude that the limited waiver of the sovereign immunity of the Veterans Administration contained in 38 U.S.C. § 1820(a)(1) does not extend to garnishment procedures to collect state court judgments of the type here involved.[3] Accordingly, the orders of the district court are affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

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[3] Of course, the Veterans Administration is not immune from garnishment proceedings for alimony or child support. *See* 42 U.S.C. § 659. No such claim is involved here.

APPENDIX B

United States Court of Appeals
for the Eighth Circuit

No. 77-1848 September Term, 1977

May Department Stores Company, Appellant,

vs.

Veterans Administration (Garnishee), Appellee.

No. 77-1849

The May Department Store Company, Appellant,

vs.

Veterans Administration (Garnishee), Appellee.

Appeals from the United States District Court for the Eastern District of Missouri

Petition of appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

April 26, 1978

No. 77-1853

In the Supreme Court of the United States

OCTOBER TERM, 1978

THE MAY DEPARTMENT STORES COMPANY, PETITIONER

v.

JAMES EDWARD SMITH, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1853

THE MAY DEPARTMENT STORES COMPANY, PETITIONER

v.

JAMES EDWARD SMITH, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

The court of appeals held that the Veterans Administration is immune from garnishment suits brought to collect commercial debts of its employees. Petitioner acknowledges that no statute allows such suits, but it asks this Court to abrogate the doctrine of sovereign immunity in garnishment actions and to overrule *Buchanan* v. *Alexander*, 4 How. 20.

Abrogation or modification of sovereign immunity, however, is the responsibility of Congress, not of the judiciary. *Federal Land Bank of St. Louis* v. *Priddy*, 295 U.S. 229, 231; *Keifer & Keifer* v. *Reconstruction Finance Corp.*, 306 U.S. 381, 389; *Federal Housing Administration* v. *Burr*, 309 U.S. 242, 244-245; see *United States* v. *Testan*, 424 U.S. 392, 399. The intent of Congress with respect to commercial garnishment of Veterans Ad-

ministration employees could not be clearer. As the court of appeals noted, Congress recently amended a "sue and be sued" clause applicable to certain Veterans Administration transactions, 38 U.S.C. 1820(a)(1), to state that "nothing in this clause shall be construed as authorizing garnishment or attachment against the Administrator, the Veterans' Administration, or any of its employees." Pub. L. 95-117, Section 403, 91 Stat. 1066. This amendment was enacted in response to a judicial decision allowing such garnishments. The Senate Report noted that, under the amendment, the "Veterans' Administration will be saved a substantial amount of paper work by not having to process commercial garnishment writs issued against its employees." S. Rep. No. 95-412, 95th Cong., 1st Sess. 29 (1977).

The court of appeals thus correctly concluded that "the limited waiver of sovereign immunity of the Veterans Administration contained in 38 U.S.C. 1820(a)(1) does not extend to garnishment procedures to collect state court judgments of the type here involved" (Pet. App. A-6; footnote omitted). Petitioner's argument that this Court should abolish sovereign immunity in circumstances where Congress has expressly preserved it is insubstantial.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

AUGUST 1978.

DOJ-1978-08